

### **Discussion and Argument**

The Office Action mailed October 30, 2007 has been carefully reviewed and this paper is Applicants' response thereto. Claims 1-8, 11-12 and 14-23 are pending. Claims 1 and 15 are amended. Claims 1-8, 11-12 and 14-23 were rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,597,954 to Pless *et al.* ("Pless"). Based on the new ground of rejection, it is understood that the prior ground of rejection has been withdrawn as being traversed. Applicants respectfully traverse the rejection in view of the remarks that follow.

### **Amended Claims**

Claims 1 and 15 are amended. Claim 1 was amended to further clarify the language of the claim and to ensure antecedent basis for the term "treatment therapy." Claim 15 was amended to clarify that step (b) is performed automatically. To the extent this was not inherent in the claim as written, support is found in the specification as filed on pg. 28, ¶ 97. Thus, no new matter was added.

### **Rejection under 35 U.S.C. § 102 - Pless**

The pending claims 1-8, 11-12 and 14-23 were rejected under 35 U.S.C. § 102(e) as being anticipated by Pless. Applicants reserve the right to address whether Pless may be properly considered a 102(e) reference.

As an initial matter, Applicants note that the rejection does not provide any explanations for what features of Pless are being read to be equivalent to the features cited in the claims. Instead, the rejection merely cites portions of Pless and suggests that somehow the claims are anticipated. Such a generalize rejection lacks sufficient specificity and does not appear to meet the burden of providing a complete rejection of the claims. *See* MPEP. 707.07; 707.07(d) (noting that a plurality of claims should never be grouped together in a common rejection unless the rejection is equally applicable to all the claims in the group). This is particularly true in view of the new ground of rejection. However, to expedite prosecution, the rejection has been addressed to the extent understood.

Claim 1 recites the feature of "receiving a first indication whether the treatment therapy is acceptable to the patient" and further recites the feature of "receiving ... a second indication whether to utilize the first and second inputs, wherein the second



indication is determined by evaluating a criterion, wherein the criterion is selected from a group consisting of a detection frequency of the neurological event, a duration of the neurological event, an intensity of the neurological event, and an electrographic spread of the neurological event.” Applicants respectfully submit that no support has been provided for the suggestion that Pless discloses either of these features.

Regarding the recited feature of “receiving a first indication whether the treatment therapy is acceptable to the patient,” Applicants have been unable to find any mention of receiving such an indication. Indeed, Pless fails to address providing feedback regarding the patient’s comfort with a particular treatment therapy. Instead, Pless merely discloses the possibility of using a standard brain mapping procedure. However, such a procedure is for the purpose of locating potential treatment regions, not testing the treatment itself. This point is supported by the specification of Pless, which states (while referring to the standard brain mapping procedure):

epileptogenic region, but in connection with the present invention, the analogous procedure serves as an indication of where sensing and stimulation might advantageously be performed.

Pless, Col. 14, ln. 40-45. Furthermore, standard brain mapping procedures are designed so that the patient cannot feel anything. Therefore, a standard brain mapping procedure would not appear to allow a patient to provide any feedback and plainly such a procedure would not inherently provide feedback as to whether the treatment therapy was acceptable to the patient. While Pless also discloses that the physician may make subsequent adjustments to the treatment if necessary, this also fails to support, either expressly or inherently, the above recited feature of “receiving a first indication whether the treatment therapy is acceptable to the patient.” For example, a physician using the system of Pless could readily decide that some adjustment was needed based on statistical review of treatment data without any input regarding patient acceptance. Thus, Pless fails to disclose the recited feature of “receiving a first indication whether the treatment therapy is acceptable to the patient.”

In addition, Pless fails to disclose the feature of “receiving ... a second indication whether to utilize the first and second inputs, wherein the second indication is determined by evaluating a criterion....selected from a group consisting of a detection frequency of



the neurological event, a duration of the neurological event, an intensity of the neurological event, and an electrographic spread of the neurological event” In this regard, the highlighted sections of Pless discussed in the Office Action make no mention of evaluating based on a criterion that is “selected from a group consisting of a detection frequency of the neurological event, a duration of the neurological event, an intensity of the neurological event, and an electrographic spread of the neurological event.” Applicants have also been unable to locate any such disclosure in the other portions of Pless. Thus, there is no support for the suggestion in the Office Action that Pless discloses the feature of “receiving ... a second indication...” as recited in claim 1.

Thus, for at least the above reasons, Pless fails to disclose all the features of claim 1. As Pless fails to disclose all the features of claim 1, it cannot be said that Pless anticipates claim 1.

Turning to independent claim 18, the feature “a processor that is coupled to the at least one monitoring element and to the output device, the processor configured to ... use an output from the detection algorithm to identify at least one neurological event focus location that is associated with the neurological event” is recited. Applicants have carefully reviewed the sections of Pless cited in the Office Action and have found no support for the suggestion that Pless discloses this feature. In addition, Applicants have been unable to locate any support for the suggestion that Pless discloses this feature in the remainder of Pless. Applicants therefore respectfully submit that there is no support for the suggestion that Pless discloses this feature of claim 18. Indeed, Pless is directed toward treatment of locations other than the focus location and states:

45 in any meaningful way. Given the neural organization of the brain, in a given patient it may be more effective to stimulate pathways associated with epileptogenic focus, rather than the focus itself, to disrupt or block the epileptiform activity to prevent the occurrence of a clinical seizure. It is anti-

Pless, Col. 4, ln. 45-49. Thus, given the failure to expressly disclose such a feature and the obvious fact that such a focus is not inherent to the operation of the systems and methods disclosed by Pless, it cannot be said that Pless discloses all the features of claim 18. Accordingly, claim 18 cannot be said to be anticipated by Pless.



Independent claims 15, 21 and 22 recite features discussed above with respect to claims 1 and 18 and are not anticipated for at least the reasons that claims 1 and 18 are not anticipated and for the additional features recited therein. For example, claim 22 recites the feature of “applying the treatment therapy every n<sup>th</sup> detection cluster” and this feature is simply not contemplated by Pless.

Dependent claims 2-8, 11-12, 14, 16-17, 19-20 and 23 depend from the above discussed independent claims and therefore cannot be considered anticipated for at least the reasons discussed above and for the additional features recited therein. For example, claim 23 depends from claim 22 and recites the feature of “wherein the nth cluster is at least a 2nd clusters, whereby the treatment therapy is not applied to at least every other cluster” and no support has been provided for the suggestion that Pless discloses such a feature.

Accordingly, for at least the above reasons withdrawal of this ground of rejection is respectfully requested.

### **CONCLUSION**

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance. If any matters can be addressed via telephone, the Examiner is invited to contact the undersigned at the number provided below.

Respectfully submitted,

**BANNER & WITCOFF, LTD.**

Dated: January 30, 2008

By: /Stephen L. Sheldon/  
Stephen L. Sheldon  
Reg. No. 58,732

Banner & Witcoff, Ltd.  
10 South Wacker Drive  
Suite 3000  
Chicago, IL 60606  
Tel: (312) 463-5000  
Fax: (312) 463-5001